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OCT 10 2006 Atty Dkt. No.: 10031014-1
USSN: 10/723,374

REMARKS

In view of the following remarks, the Examiner is requested to allow claims 1-10 and 12-16, the only claims under examination in this application.

Claims 2 and 4 have been amended for clarity. Support for these amendments can be found in the specification, particularly in paragraphs 41 and 28.

No new matter has been added.

Claim Rejections – 35 U.S.C. § 112, second paragraph

Claims 2, 4 and 5 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite.

In attempting to establish this rejection, the Examiner argues that it is unclear whether the recited probe densities are with respect to the number of probe molecules per feature, or the number of probes per support in its entirety.

In response, the Applicants note that Claim 2 recites a method in which "said at least first population is present in at least one *feature* at a probe density" and claim 4 recites a method in which "each of said replicate *features* comprises probes at a density.....". Likewise, claim 5 recites a method in which "said number of probe copies of said at least first population ranges from about 6×10^4 *probes/feature* to about 6×10^{12} *probes/feature*".

A plain reading of the claims reveals that the probe densities relate to the number of molecules per feature, rather than the number of probes per support in its entirety.

The Applicants submit that this rejection has been adequately addressed. Withdrawal of this rejection is respectfully requested.

Claim Rejections – 35 U.S.C. § 102

Claims 1-16 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Albitar et al. (Molecular Diagnosis, 1997).

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According to the MPEP, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim. See MPEP 2131.

The rejected claims are directed to a method array fabrication method in which the density of probes of a feature (i.e., the number of probe molecules present in a feature) is dependent on the anticipated abundance of target for that probe in a sample.

This feature simply isn't disclosed by Albitar and, as such, this rejection may be withdrawn.

In an attempt to support this rejection, the Office cites page 172, column 2 of Albitar. The Office specifically states that "the probes are immobilized onto the membrane in 3 different concentrations 15, 75 and 375 pmol as these target [sic] is anticipated to fall within one of these concentrations." (Emphasis added.)

However, a detailed review of the cited section of Albitar's disclosure indicates that Albitar merely deposits the same oligonucleotide probe at three different concentrations onto a membrane, and then hybridizes the probes to a single PCR product.

The cited passage neither includes any teaching relating to the abundance of the labeled single PCR product, nor any teaching relating to producing an array in which probe densities are dependent on the anticipated abundance of a target.

As such, Albitar fails to disclose at least one element of the rejected claims, and this rejection may be withdrawn.

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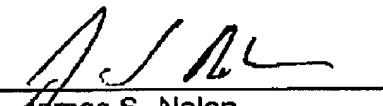
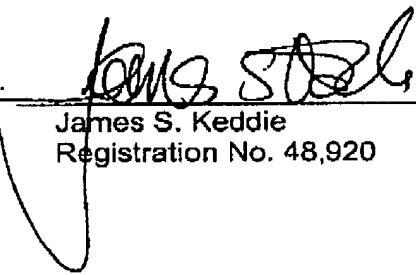
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CONCLUSION

Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone Timothy Joyce at (408) 553-2510.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-1078, order number 10031014-1.

Respectfully submitted,

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